SINGAPORE REPORTS

PUBLIC PROSECUTOR v. CHAN SWAY BENG

[O.Cr.J. (Chua J. & Grimberg J.C.) 18 May 1988]

[Singapore – Criminal Case No. 13 of 1986]

Evidence – Confession – Admissibility of – Whether section 121(5) of the Criminal Procedure Code overrides section 26 of the Evidence Act – Warning under section 121(6) of the Criminal Procedure Code – Explanation of – Evidence Act (Cap. 5, 1970 Ed.), s. 26 – Criminal Procedure Code (Cap. 113, 1970 Ed.), s. 121(5) & (6).

Criminal Procedure – Confession – Admissibility of – Criminal Procedure Code (Cap. 113, 1970 Ed.), s. 121(5) & (6).

The accused was charged with murder, an offence punishable under section 302 of the Penal Code (Cap. 103, 1970 Ed.). While in custody, the police recorded a statement from the accused and the prosecution sought to admit this in evidence. Counsel for the defence objected to the admissibility of the statement on the grounds that section 26 of the Evidence Act operated to exclude the statement by virtue of it not having been made in the presence of a magistrate and that it would be necessary for section 121(5) of the Criminal Procedure Code to contain the words "notwithstanding section 26 of the Evidence Act" or, alternatively, the words "whether in police custody or not", in order for the statement to be admissible under that section. The court also had to consider whether the accused's statement could be admitted, having regard to the manner and circumstances under which it was recorded.

Held: (1) section 121(5) of the Criminal Procedure Code lets in a confession, whether or not made pursuant to section 121(6), so long as the maker has been charged, and whether or not it is made while he is in police custody. That follows directly from the very wide language of the sub-section, and not by inference;

(2) it was plain from the evidence that the charge was not explained to the accused, nor was the section 121(6) warning. By reason of this, the accused's statement cannot be admitted in evidence.

(3) apart from the statement, there existed at the end of the prosecution case credible evidence which established that the accused murdered the deceased within the period specified by the charge;

(4) as the accused elected to remain silent when called upon to enter his defence, the court had no alternative but to convict him.

Cases referred to:

(1) *Public Prosecutor* v. *Yator bin Bunta* [1988] 1 M.L.J. 163 (expld).
(2) *Public Prosecutor* v. *Zainal Abidin bin Ismail & 3 Ors.* [1987] 2 M.L.J. 741 (apprvd).
(3) *Public Prosecutor* v. *Ng Goh Weng & Anor.* [1979] 1 M.L.J. 127 (apprvd).
(4) *Shanmugam* v. *Commissioner for Registration of Indian and Pakistani Residents* [1962] A.C. 515 (cited).

HIGH COURT.

Ang Sin Teck (Deputy Public Prosecutor) for the Public Prosecutor.

N.S. Kang for the accused.

Cur. Adv. Vult.

Grimberg J.C. (delivering the grounds of decision): At about 4.10 p.m. on 18 March 1985, the body of Sng Chiam Hong ("the deceased") was found in a one-room flat known as Block 44 Lorong 5 Toa Payoh #01-205. The police had gone there following an anonymous telephone call complaining of a stench emanating from the flat. They caused the door of the flat to be forced open and the decomposed body of the deceased was seen to be sprawled, face upwards, on a mattress which lay on the floor.

Dr. Wee Keng Poh, a forensic pathologist attached to the Singapore General Hospital, attended at the flat following the discovery of the body. He removed a towel that was covering the deceased's face and saw a blue handkerchief knotted lightly around his neck. There were injuries on the body, including stab wounds on the chest. Dr. Wee concluded that death had occurred about three days previously, that is to say, on or about 15 March 1985. The deceased, who was aged 39, was removed to the Singapore General Hospital mortuary, and on the following day, 19 March 1985, Dr. Wee carried out a post-mortem examination.

The post-mortem disclosed a deep constricting groove encircling the deceased's upper neck. There were two stab wounds on the chest, one in the abdomen and one in the right thigh. One of the stab wounds in the chest was 7 cm deep. It had penetrated the full thickness of the anterior chest wall and the main pulmonary arterial trunk, and had caused death. It had been inflicted by a sharp, pointed instrument, like a knife, with either one or two sharp edges. The other stab wounds had been caused by the same, or a similar instrument, but were not serious and would not have caused death.

In Dr. Wee's opinion, the deep constricting groove encircling the deceased's neck was caused by strangulation, which could have resulted in death independently of the fatal stab wound. The ligature used to strangle the deceased had been the handkerchief seen to be encircling his neck.

Other than the groove in the neck, and the stab wounds, Dr. Wee found a superficial cut on the

deceased's left knee, and a bruise on his left shin. The cut would have been caused by a sharp instrument like a knife and the bruise by a fall or a blow against a hard surface.

Toh Peng Noi (PW1), a student and part-time tutor, told us that the deceased, who was her godfather, was a medium. She identified a gold ring (P54), with an emblem of a dragon embossed on it, as having belonged to the deceased. Under cross-examination, she agreed that the deceased's ring bore no distinctive marks, and that the most she could say was that the deceased had a ring like P54. She could remember that when she last saw the deceased at about 7.00 a.m. on 15 March 1985, he was wearing the ring that looked like P54. The deceased had telephoned Miss Toh at about 9.50 p.m. on the night of 15 March, while she was out, and her brother had taken a message for her.

A statement of Liow Tiang Ting (PW3), a pawnshop valuer employed by Ban Kin Pawnshop Pte. Ltd., was tendered by the prosecution and was admitted unchallenged. In his statement, Liow said that at about 9.30 a.m. on the morning of 16 March 1985, that is to say, the morning following the day on which Dr. Wee Keng Poh estimated that the deceased had died, a male Chinese pawned P54 for $180. Low issued a pawnticket no. 1842 (P57) for the ring. The particulars of the man who pawned the ring were: Chan Sway Beng, NRIC No. 1502682-J, Block 103, Toa Payoh, Lorong 1, #09-331

Two days later, namely on 18 March 1985, at about 2.30 p.m. another male Chinese, whose particulars were recorded as Sim Kiang Wee, NRIC No. 1474325-A, came to Low's shop, presented the pawnticket P57, and redeemed the ring.

Ho Yun Hin (PW2), whose statement was also admitted without challenge, said that he was employed as a pawnshop valuer by Heng Seng Pawnshop Pte. Ltd., and that on 9 April 1985, at about 4.00 p.m., a male Chinese pawned two gold rings for a total of $250. One of the rings was P54, and the other was a plain gold ring, P55. Ho issued a single pawnticket no. 1837 (P56) for both rings and gave it to the man, whose particulars were recorded as: Sim Kiang Wee, NRIC No. 1474325-A, Block 101, Lorong 2, Toa Payoh #04-91.

The prosecution sought to introduce the evidence of Sim Kiang Wee by way of a written statement, pursuant to section 378(1)(a)(i) of the Criminal Procedure Code, Sim having died on 4 April 1987. The notice called for by section 379(2) of the Criminal Procedure Code was not served on the defence, hence leave of the court was required for Sim's evidence to be adduced by way of his written statement.

The statement had been made for the purposes of a preliminary inquiry held on 7 November 1985. It had been read and admitted at the preliminary inquiry, at which Sim was available for cross-examination. Counsel for the accused, as he had a perfect right to do, reserved his cross-examination of Sim.

It was common ground that we had a discretion as to whether or not to admit Sim's statement. The prosecution conceded that his evidence went to crucial facts in the case.

We declined to exercise our discretion in favour of the prosecution and refused to give leave for Sim's written statement to be adduced in evidence. We concluded that it would be unfair to do so, given that the deponent was not available for cross-examination on important issues and that there would be no opportunity for us to observe his demeanour. The learned Deputy Public Prosecutor submitted, *inter alia*, that Sim's statement would corroborate that of other witnesses. That, in our view, rendered it all the more important that Sim's statement should not go in without the opportunity for cross-examination, and therefore without our being in a position to assess his credibility.

Goh Choon Hui (PW9) is an inmate at the Sembawang Drug Rehabilitation Centre, where he has been detained since April 1987. He told us that in March 1985 he was living at Block 106, Lorong 1 Toa Payoh #04-351 with Sim Kiang Wee, Leong Fook Hing (PW10) and Ong Kok Hua (PW11). Goh had known the accused for some seven or eight years by 1985. They were both house painters, both gambled on horses, and occasionally they went out drinking together.

Goh said that on 16 March 1985, the day after the deceased was thought to have been killed, he saw the accused at the void deck of the block of flats in which Goh lived. The accused said that he owed bookies money, and asked if he could stay at Goh's flat for a few days to avoid them. Goh agreed.

Goh's memory of events from that point onwards seemed to fade. He remembered the accused telling him that he had injured somebody

in Toa Payoh, identifying the injured person as "Ah Ngoh" or "Ah Boh", a person whom Goh knew. The accused told Goh that this person had owed him money. He showed Goh a pawnticket, saying that he had pawned a gold ring. Goh identified P57 as the pawnticket the accused showed him. The accused offered to sell the pawnticket to Goh for $50, and as far as Goh could remember he went to the pawnshop and redeemed the ring. He was shown the ring, exhibit P54, but he could not say whether it was the ring he had redeemed. Later, Goh said that he had given the pawnticket to Sim Kiang Wee, and had asked Sim to redeem the ring and keep it for himself. He said Sim used his own money to redeem the ring.

In cross-examination, Goh agreed that when the accused spoke to him about injuring someone, the accused had said that this person owed him money, and that he wanted to recover it. There had been a quarrel, during which the debtor had raised his voice, and a fight. It was only later, when Sim Kiang Wee had shown him a Chinese newspaper, that he realized that the person with whom the accused had had the quarrel had died.

Leong Fook Hing (PW10) confirmed that he was living with Goh and Sim Kiang Wee in March 1985, and that sometimes Ong Kok Hua (PW11) would stay with them. It was Goh's flat in which they stayed.

In March 1985, Leong had known the accused for about a year or two. They were both house painters and occasionally worked together.

On 16 March 1985 at about 6.30 p.m., Leong was at Goh's flat when the accused came in. He said he wanted to stay for a few days because he owed bookies some money. Goh and Ong Kok Hua were present. Goh told the accused that he could stay.

Leong said that on the following day he, Goh, the accused and Ong were having dinner at Goh's flat when the accused said that he had killed somebody in Toa Payoh. Leong did not believe the accused since he reasoned that if the accused had really killed somebody he would not tell others about it.

However, a few days later, the accused showed him English and Chinese newspapers, and Leong read in the *Straits Times* about a temple medium having been murdered in Toa Payoh. The accused said that he had murdered this man. Leong asked him if he was speaking the truth, and the accused said that he was. Leong became frightened and said no more. When he woke up the next morning, the accused was no longer in the flat. Goh told him that the accused had left, but did not say why.

Leong was cross-examined by counsel for the accused. He was asked what words the accused had uttered when saying that he had killed someone. Leong replied that the accused had said: "I killed one person in Toa Payoh." He was sure these were the words the accused had used, and did not agree that the accused had said that he was "having a problem with" someone, the Hokkien for "having a problem with" and "killed" being phonetically similar.

It was put to Leong by counsel for the accused that the accused had in fact said: "I had a problem with someone. I had a quarrel and a fight", and that the accused had not said that he had killed someone. Leong replied that as far as he could remember, the accused said: "I killed one person at Toa Payoh."

Leong admitted that his evidence differed in a number of respects from a statement he made on 26 October 1985, which was read at the preliminary inquiry. He explained the discrepancies by saying that he could not remember accurately what had happened three years earlier. In one respect, what he said in the earlier statement was correct, and his evidence in court was mistaken, namely, he was correct in having said in his statement that on the morning after the newspapers published the report of the murder, Goh woke the accused up and asked him to leave the flat. Leong had been mistaken in saying in court that when he woke up that morning the accused had already left.

Ong Kok Hua (PW11) is a salesman. He went to live with Goh Choon Hui, whom he has known since they were youngsters, in January 1985. Leong and Sim Kiang Wee were also living there.

Ong told us that he knew the accused. They had known each other since they were boys.

On a Saturday afternoon in March 1985, the accused came to Goh's flat, and stayed the night. The next day, when he, the accused, Leong and Sim Kiang Wee were having dinner (he could not remember whether Goh was present) the accused said that he had had a quarrel with somebody. There had been a fight, and he had killed the other person with a knife. The person in question

had been deceiving the accused. He had promised to lend some money to the accused but had not kept his promise.

Ong told us that he did not believe the accused, but that subsequently (he could not remember how many days later), the accused showed him the *Sin Min Daily News*, and Ong read a report of someone having been murdered at Block 44, Toa Payoh Lorong 5, that is to say, the block in which the deceased lived, and in which his body was found. The accused said that the person referred to in the newspaper had been killed by him. Later, Ong had left the flat. He wondered to himself why the accused was at the flat if it was true that he had murdered somebody. He went back to the flat the following morning and discussed the matter with Goh and Leong. They decided that it would not be wise for them to accommodate the accused at the flat if he had really murdered somebody. Subsequently Ong left the flat, and when he returned in the evening the accused was no longer there.

Ong said, under cross-examination, that he could not remember whether Goh was present at dinner when the accused first stated that he had killed a person at Toa Payoh. Leong was there because he was in the flat most of the time, and Sim was in the flat because he had returned the previous day from a trip to Indonesia. Ong agreed that he sometimes punted on horses at the same place as the accused. He denied that he had a grudge against the accused as a result of a quarrel over horse-racing tips. As far as he could remember, he had never had a quarrel with the accused, whom he regarded as a friend. He did not like to see the accused in the dock, was worried for him, and was only telling the court what had happened. It was put to him in cross-examination that the accused had said that he had had a quarrel and a fight, rather than that he had killed a person. Ong agreed that the accused had mentioned a quarrel and a fight, but that he had also said that the accused had killed the person in question with a knife.

The accused, who was 23 years old at the time, was taken by officers of the Special Investigation Section ("SIS") of the CID from his grandparents' flat at Block 103 Toa Payoh to the CID for questioning at about 6.00 a.m. on 20 April 1985.

He was interviewed at the offices of the SIS between 6.30 a.m. and 8.00 a.m. At about 9.25 a.m. he was escorted to the Singapore General Hospital for a medical examination by Dr. Henry Kothagoda. Dr. Kothagoda found his general condition to be satisfactory, and his vital signs stable. Following his examination, the accused was taken back to the CID and referred to the investigating officer, Inspector T. Maniam. Inspector Maniam framed a charge of murder against the accused, in the following terms:

> "That you Chan Sway Beng between 15 March 1985 and 18 March 1985, at Block 44, Lorong 5, Toa Payoh # 01-205, Singapore, committed murder by causing the death of one Sng Chiam Hong, and you have thereby committed an offence punishable under section 302 of the Penal Code (Chapter 103)."

Inspector Maniam then proceeded to record a statement from the accused. The inspector, who was assisted by an interpreter, Miss Lau Sau Heng (PW12), followed, as he understood it, the procedure set out by section 121(6) (now section 122(6)) of the Criminal Procedure Code. The recording of the statement occupied approximately two hours, after which the accused was again escorted to the Singapore General Hospital where he was examined for a second time by Dr. Kothagoda. He was found to be well, fully alert and responsive.

Dr. Kothagoda said, under cross-examination, that he was concerned to ascertain whether there were any physical injuries on the accused, and not with his psychological condition. However, the accused did not appear to him to be very anxious or panic-stricken.

Counsel for the defence objected to the admissibility of the statement recorded by Inspector Maniam on two grounds. Counsel's prelimary objection was that the statement made by the accused was not admissible in that, since it amounted to a confession within the meaning of section 17 of the Evidence Act, and since it was made (as was conceded bythe prosecution) while the accused was in the custody of a police officer, section 26 of the Evidence Act operated to exclude the statement by virtue of it not having been made in the presence of a magistrate. Section 26 provides as follows:

> "Subject to any express provision in any written law, no confession made by any person whilst he is in the custody of a police officer, unless it is made in the immediate presence of a magistrate, shall be proved as against such person."

Counsel for the accused argued that the statement was not saved from the operation of section

26 because there was nothing in section 121(5) of the Criminal Procedure Code, which governed the admissibility of a statement made under section 121(6), which expressly overrode section 26 of the Evidence Act.

The position would have been otherwise, counsel contended, if section 121(5) expressly provided that a statement amounting to a confession and otherwise falling within its provisions was admissible whether or not its maker was in custody, or alternatively, if it provided that such a confession was admissible "notwithstanding section 26 of the Evidence Act". Counsel argued that section 121(5) fell short of doing this and must therefore be construed to apply only to confessions made otherwise than when the maker was in custody.

The defence relied substantially for this proposition on *Public Prosecutor* v. *Yator bin Bunta,*[1] a case decided by the High Court in Brunei. Section 26 of the Brunei Evidence Act is *in pari materia* with section 26 of the Evidence Act of Singapore, but section 117(1) of the Brunei Criminal Procedure Code, which is the equivalent of section 121(5) of our Code, is in significantly different terms in that the opening words of our sub-section (5) do not appear in section 117(1). The latter section reads:

"In any criminal proceedings any statement made by any person, whether it amounts to a confession or not or is oral or in writing, made at any time, whether before or after that person is charged and whether in the course of a police investigation or not, by that person to or in the hearing of any police officer shall be admissible in evidence and, if that person tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit."

Section 121(5) of the Criminal Procedure Code is in very similar same terms, save that it begins with the words "Where any person is charged with an offence..." instead of "In criminal proceedings ..." Section 117(1) of the Brunei Act does not contain the proviso to section 121(5) of the Singapore Act.

In *Yator bin Bunta's* case,[1] O'Connor J. held that section 26 of the Evidence Act "gives a right to an accused person, and the introductory words... are a guide to the construction of subsequent legislation that appears to bear on the same subject matter." He went on to observe that it was strange, if the legislature intended a confession made while in custody to be admissible by virtue of section 117(1), that the sub-section does not include a phrase such as "whether in police custody or not". In the learned judge's view, the words "made at any time, whether before or after that person is charged" do not relate to the circumstances of the maker of the confession (that is to say whether or not he is in custody), but "relate to a merely temporal matter, to the sequence, in relation to charging". Nothing, in his opinion, necessitated that section 117(1) be construed to apply to a confession made by a person while in custody.

In so concluding, O'Connor J. differed from the decision of the High Court in Brunei in *Public Prosecutor* v. *Zainal Abidin bin Ismail and 3 Ors,*[2] decided by Roberts C.J. some months earlier; and from a decision of five judges of the Federal Court of Malaysia in *Public Prosecutor* v. *Ng Goh Weng & Anor.*[3] Both Roberts C.J. and the Federal Court held that section 117(1) of the Brunei Code and section 113(1) of the Malayan Code respectively contained an express provision, within the meaning of section 26 of the Evidence Act of both territories, which resulted in a confession made by a person in custody being admissible.

In our respectful judgment, Roberts C.J. and the Federal Court were right. If anything, the position in Singapore is clearer. Section 121(5) makes it plain that a statement amounting to a confession, made at any time by a person who has been charged, is admissible if it is made to or in the presence of a police officer above the rank of sergeant, provided that it was not caused by any inducement, threat or promise.

We are unable to accept the contention of the defence that, in order for a confession made while in custody to be admissible, it would be necessary for section 121(5) to contain the words "notwithstanding section 26 of the Evidence Act" or, alternatively, the words "whether in police custody or not", in relation to a confession so made. The Privy Council has held that, for a provision to be "express", all that is necessary is that it should not arise by inference alone, but that it should do so "directly from the language used" – see *Shanmugam* v. *Commissioner for Registration for Indian and Pakistani Residents,*[4] in which Lord Radcliffe states, at p. 527:

"Their Lordships are of the view that it is correct to state that express provision is provision the applicability of which does not arise by inference. The applicability, however, of the provision under discussion to the present case does not arise by inference; it arises directly from the

language used. The fact that the language used is wide and comprehensive and covers many points other than the one immediately under discussion does not make it possible to say that its application can arise by inference only. To be 'express provision' with regard to something it is not necessary that that thing should be specially mentioned; it is sufficient that it is directly covered by the language however broad the language may be which covers it so long as the applicability arises directly from the language used and not by inference therefrom."

In our judgment, section 121(5) of the Criminal Procedure Code lets in a confession, whether or not made pursuant to section 121(6), so long as the maker has been charged, and whether or not it is made while he is in police custody. That follows directly from the very wide language of the subsection, and not by inference. We are unable to agree that the words "at any time" have only a temporal connotation, and that they must be construed to mean "at any time so long as the accused is not in custody". Needless to say, a confession made at any time, within the meaning of section 121(5), would be excluded by virtue of the proviso to section 121(5) if it were caused by inducement, threat or promise.

We are fortified in our view of the position because, if counsel for the defence was right, an absurd result could arise if an accused person, who was in custody, made a section 121(6) statement in the presence, say, of a police inspector but not a magistrate, which amounted to a confession but which also included exculpatory passages. It would be open to the prosecution, in that event, to object to the admission of such a statement, which cannot possibly have been the intention of the legislature.

Accordingly, we ruled against the defence in regard to its preliminary objection to the admissibility of the accused's statement.

A sub-trial followed for the purpose of determining the admissibility of the accused's statement, having regard to the manner and circumstances under which it was recorded.

Det. Sgt. Lim Beng Gee (PW5) said in evidence that, having taken the accused to the C.I.D. building early on the morning of 20 April 1985, questioning of the accused began in a room on the 4th storey of the building at about 6.30 a.m. Initially, only Sgt. Lim and Det. Choo Wee Guan were present. Other officers walked in and out of the room from time to time, but took no part in the questioning of the accused. Inspector Maniam came into the room "after 7.15 a.m.", and at about 8.10 a.m. Sgt. Lim placed the accused under arrest, on the instructions of Inspector T. Maniam, the investigating officer.

It was put to Sgt. Lim, under cross-examination, that he threatened the accused by telling him that he would be beaten up and detained if he did not admit to the crime. Sgt. Lim denied this, and he also denied telling the accused that he had to give a positive, *i.e.* inculpatory, statement when Inspector Maniam came in. Sgt. Lim said that the accused made no admissions before the arrival of Inspector Maniam, and only did so at about 8.00 a.m., that is to say, about three quarters of an hour after Inspector Maniam arrived.

Det. Choo Wee Guan (PW14) was called as a witness in the sub-trial, but his evidence was of no consequence since the defence conceded that he had not taken any part in the questioning of the accused.

Miss Lau Sau Heng (PW12) is an interpreter employed in the C.I.D. She has been certificated for ten years. She told us that on the morning of 20 April 1985, she was requested by Inspector Maniam to assist in the interpretation of a statement which he proposed to record from the accused under section 121(6) of the Criminal Procedure Code. She was introduced to the accused, who indicated that he wished to speak in the Cantonese dialect.

Miss Lau interpreted the typewritten charge (P51) to the accused in Cantonese. He indicated that he understood the charge, and signed it. Inspector Maniam then wrote the charge out on a sheet of paper (P52), and Miss Lau interpreted it to the accused. Having indicated again that he understood it, the accused signed P52, under the words: "The above charge was read over to me in English by the recorder and interpreted in Cantonese by the interpreter Lau Sau Heng and I understood the contents of the charge", these words having also been interpreted to the accused by Miss Lau.

Inspector Maniam then wrote, on P52, the following warning:

"Do you wish to say anything in answer to the charge. If there is any fact on which you intend to rely in your defence in court, you are advised to mention it now. If you hold it back till you go to court your evidence may be less likely to be believed and this may have a bad effect on your case in general. If you wish to mention any fact now and would like it written down, this will be done."

These words were interpreted to the accused by Miss Lau. The accused indicated that he understood the warning, and signed P52 again, under the following legend which was itself interpreted to him in Cantonese:

"The above warning was read over to me in English by the recorder and interpreted to me in Cantonese by the interpreter, Lau Sau Heng, and I understood the contents of the above warning."

A carbon copy of P52 was then served on the accused.

Under cross-examination by counsel for the accused, Miss Lau confirmed that she saw her role that morning as purely that of interpreter. Accordingly, she interpreted word for word what Inspector Maniam read to the accused, and no more. She interpreted everything that was written in the charge, and in the warning. After the accused had been served with a copy of P52, which contained the charge and the warning, in English, he was informed that he could make a statement, if he wished. The accused did not say that he wanted it written down.

The evidence of Inspector Maniam (PW13), with regard to the procedure followed before the recording of the accused's statement began, generally mirrored that of Miss Lau. He confirmed, in cross-examination, that he read the charge to the accused in English, word for word, as he had written it on P52. He had done the same with regard to the notice of warning. It was when the accused indicated that he understood the charge, and the warning, following their interpretation by Miss Lau, that he wrote out the words reproduced above, and asked the accused to sign under them.

After the accused had been served with a copy of P52, he was asked whether he wished to say anything, whereupon the accused "began talking about the events". The accused did not indicate that he wished what he said to be written down. Inspector Maniam conceded that the word "you" which appears in the last line of the warning set out in section 121(6) was inadvertently omitted by him when he wrote out the warning on P52.

The Inspector confirmed that at no time did he explain the charge, beyond reading it out. The same went for the warning, although he asked the interpreter to explain both the charge and the warning to the accused.

Inspector Maniam said he had entered the room in which Sgt. Lim were questioning the accused at about 7.30 a.m. that morning (20 April 1985). Det. Choo Wee Guan was the only other person in the room. Det. Sim Siew Hua was not present. It was as a result of something which the accused said at about 8.10 a.m. that the Inspector instructed Sgt. Lim to place the accused under arrest. The accused had appeared normal while Inspector Maniam was in the room with him, and neither the Isnpector nor Sgt. Lim had threatened him, or offered him any inducement or reward.

In the event, the only prosecution witnesses in the sub-trial were Sgt. Lim, Miss Lau, Sgt. Choo and Inspector Maniam. Det. Sim Siew Hua was not called, although he had given evidence in the main trial, presumably because it had not been suggested in the cross-examination of the other prosecution witnesses in the sub-trial that Det. Sim had conducted himself towards the accused in a manner which might have a bearing on the admissibility of the accused's statement.

The accused gave evidence on his own behalf in the sub-trial. He confirmed that he was questioned by Sgt. Lim after being taken to the C.I.D. Sgt. Lim asked him whether he had killed the deceased, and when he was silent in response to this question, the sergeant insisted, in a loud, scolding tone that it must have been him. When the accused asked if he could go home, in order to proceed to his place of work, Sgt. Lim had said, in a scolding tone: "You sit down. You cannot leave now." The accused was a little frightened, and it was at this point that Det. Sim Siew Hua came in. Sim kept insisting that it was the accused who killed the deceased, and told the accused that it was better for him to admit it. Sim then came up to the accused, held his left hand by the wrist, and placed his right fist against the accused's cheek. The accused's heart beat very fast, and he was very frightened because he thought that Det. Sim was going to assault him. Sim said: "You are the one who killed the deceased. You had better admit or I'll put you under section 55." The accused asked what Sim meant, whereupon Sim replied: "Imprisonment". Sim spoke in a tone suggestive of a quarrel, and the accused was "very scared". As Sim's fist was pressed against the accused's cheek he made an admission, because he was afraid that Sim would assault him. Det. Sim made "a deep impression" on the accused, because it was he who had threatened the accused. He felt that if he did not make an admission, Det. Sim would assault him.

After he had made the admission, Inspector Maniam entered the room, spoke to the officers

there, and then left. Det. Sim then came up to the accused again and instructed him to tell Inspector Maniam how he had carried out the killing.

As regards the recording of his statement by Inspector Maniam later in the morning, the accused said the charge and the warning written out on P52 were interpreted to him, but not explained. He did not understand either the charge or the warning fully.

A number of questions were put to the accused by the court. In answer to them the accused said that it was Det. Sim alone who frightened him, and it was the act of Det. Sim in putting his fist against the accused's cheek which frightened him most. He confirmed that his counsel in the case, Mr. Narindar Singh Kang, had been his counsel for some three years, and he said that he told Mr. Kang about the incident concerning the placing by Det. Sim of his fist against the accused's face.

In answer to another question, the accused said that he made no admission when questioned by Sgt. Lim and Det. Choo, and that he did so only after Inspector Maniam entered the room. Inspector Maniam had not shouted at him or threatened him, and he had not told Inspector Maniam that he had been threatened and frightened by Det. Choo because he was afraid to do so.

Insofar as his failure to comprehend the charge and warning was concerned, he did not understand what the words "charge" and "defence" meant.

At the conclusion of the sub-trial, we declined to admit into evidence the statement made by the accused to Inspector Maniam.

In setting out to record a statement from the accused, Inspector Maniam had proceeded under section 121(6) of the Criminal Procedure Code. That sub-section provides that a person who is invited to make a statement "shall be served with a notice in writing" (the warning) "which shall be explained to him ..." The warning incorporates the charge, and it follows that both must be explained.

It was plain from the evidence before us that the charge was not explained to the accused; nor was the warning. Both were read out to him in English, and interpreted to him, word for word, in Cantonese. That is all. It is true that the accused signed statements written out on P52 to the effect that he understood both the charge and the warning, which statements were themselves interpreted to him, but we were not persuaded that this cured the omission to explain the charge and the warning.

Sections 121(6) and 122(1), now section 123(1), were enacted in 1976. The combined effect of these two sub-sections is that, where a person in the position in which the accused found himself fails, upon being administered the warning provided by section 121(6), to mention a fact which he could reasonably have been expected to mention, the court may draw adverse inferences against him. Having removed the right, which previously existed, of an accused person to remain silent without adverse consequences, the legislature was, by enacting sections 121(6) and 122(1), conferring upon the accused the right, if he wished, to make a statement in exculpation of himself at a certain stage of the proceedings against him, which the court was entitled to take a full account of.

That, it seemed to us, could well be why section 121(6) required that the warning be "explained". The Act makes a clear distinction between explanation and interpretation, as will be seen by comparing section 121(6) with section 123(4), the latter dealing with statements or confessions made before a magistrate.

In the present case, it was obvious to Inspector Maniam when he decided to record a statement from the accused under section 121(6), that the accused intended to make a confession, which might not or might contain exculpatory statements. It must follow that Inspector Maniam anticipated that the statement would be used in the proceedings against the accused. The more reason then why the warning and the charge should have been explained. The accused was a primary six drop-out, and he told us that, *inter alia,* he did not understand what was meant by the word "defence" (in court) which appears in the warning. In our view, he was entitled to fully appreciate that if he had anything to say in exculpation of the alleged offence, that was the time to say it. Admittedly, the accused signed a statement to the effect that he understood the charge, and the warning. He may well have thought he did, when in fact he did not. Had the evidence been that he received an explanation, as required by section 121(6), he could not have been heard to complain.

We declined to admit the accused's statement by reason of the failure of Inspector Maniam and Miss Lau to explain the charge and the warning to

the accused, and for no other reason. We did not accept the contention of the defence that the omission of the word "you" in the phrase "you would like", which appears in the warning, affected the admissibility of the statement. Nor were we persuaded that the accused made his statement as a result of threats uttered by Det. Sim Siew Hua. It was never suggested to Sgt. Lim by defence counsel that Det. Sim had threatened the accused in any way. The accused conceded that he made no admissions while Sgt. Lim and Det. Sim were alone with him. He made an admission to Inspector Maniam at least 30 minutes after the Inspector entered the room in which the accused had earlier been questioned by Sgt. Lim, and on the accused's own admission, the Inspector had not threatened him in any way. He had made no complaint to the Inspector concerning the alleged threat by Det. Sim. Quite simply, we did not believe the accused's evidence that he had been threatened by Det. Sim.

Following our refusal to admit the accused's statement in evidence, the prosecution closed its case. Counsel for the accused thereupon submitted that no case had been made out against the accused which, if unrebutted, would warrant his conviction. The basis for this submission was that such incriminatory evidence as existed was circumstantial; was given by Goh Choon Hui (PW9), Leong Fook Hing (PW10) and Ong Kok Hua (PW11), all of whose evidence was contradictory and inherently incredible and, in any event, did not link the accused with the murder of the deceased. Even if the accused had told witnesses that he had killed a person at Block 44, Lorong 5 Toa Payoh, that was not enough. He did not say that he had killed the deceased. The newspaper articles alleged to have been shown by the accused to PW9, PW10 and PW11 had not been produced, and the murdered person referred to in them had not been named. There might have been another murder at Block 44, who knew? The ring which the accused had pawned on the morning of 16 March 1985 had not been positively proved as having belonged to the deceased, and even if it had, that evidence did not go to a charge of murder.

We rejected the submission of no case to answer because, in our judgment, there existed at the end of the prosecution case credible evidence, which if we accepted it as accurate, established that the accused murdered the deceased, Sng Chiam Hong, within the period specified by the charge.

In our judgment, the prosecution adduced credible evidence that:

(i) the deceased, Sng Chiam Hong, was a medium;

(ii) the deceased was last seen at about 7.00 a.m. on 15 December 1985;

(iii) at the time the deceased was last seen, he was wearing a gold ring like P54 with a dragon embossed on it;

(iv) on the evening of 15 December 1985 the deceased made a telephone call to PW1, his god-daughter, and upon having been told that she was not in, said that he would phone again, but did not;

(v) the deceased was murdered on or about 15 December 1985 at Block 44, Lorong 5, Toa Payoh #01-205;

(vi) the fatal injury was caused by a sharp instrument, such as a knife;

(vii) at about 9.15 a.m. the next morning, a ring with a dragon embossed on it (P54) was pawned by a male Chinese for $180. The person who pawned the ring produced an identity card which disclosed that he was Chan Sway Beng. The identity card number was 1502682-J and it showed that its holder lived at Block 103, Toa Payoh, Lorong 1 #09-331. A pawn ticket (P57) was issued for the ring;

(viii) later the same day, 16 March 1985, the accused, Chan Sway Beng (who lived at Block 103, Toa Payoh), approached Goh Choon Hui, and asked if he could stay at Goh's flat in Toa Payoh because he owed money to bookies, and wished to avoid them. Goh agreed to the accused's request. The accused offered to sell the pawnticket P57 to Goh for $50. Sometime later Goh redeemed the ring (P54), or arranged for it to be redeemed by Sim Kiang Wee;

(ix) on 17 March 1985, while the accused was staying at Goh's flat, he stated in the presence of Leong Fook Hing and Ong Kok Hua that he had killed a person at Toa Payoh. The accused said that there had been a quarrel and a fight, and that he had killed this person with a knife,

(x) the body of the deceased was found in his flat at Block 44, Toa Payoh, Lorong 5 at about 3.30 p.m. on 18 March 1985;

(xi) none of the furniture or articles in the room in which the deceased was found was upset, and there were no other visible signs of a struggle or fight;

(xii) the fatal stab wound was likely to have been caused by a curved downward thrust into the deceased's chest, and was not likely to have been the result of the deceased running into a knife held in a slightly downward position;

(xiii) soon after the accused stated that he had killed a man in Toa Payoh, the murder of a man in Toa Payoh was reported in the *Sin Min Daily News* and the *Straits Times*. One of these newspapers described the victim as a temple medium. The accused showed these newspapers to Leong Fook Hing and Ong Kok Hua, and told them that the person referred to in the newspaper reports was the person he had killed;

(xiv) the *Sin Min Daily News* reported that the murder had taken place at Block 44, Lorong 5 Toa Payoh.

It is true that PW9, on the one hand, and PW10 and PW11 on the other, gave differing versions of the statements made to them by the accused. PW9, in particular, said that the accused stated that he had injured someone, and that it was not until PW9 read the newspapers later that he realized that the injured person had died. PW10 and PW11, for their part, were certain that the accused said that he had killed a person in Toa Payoh following an argument and a fight. We were impressed by the evidence of PW10 and PW11. They had no reason to lie; PW11 in particular had been a friend of the accused since they had been children, and we believed him when he said that he had no quarrel with the accused, and bore him no grudge.

In the event, we rejected the submission of no case to answer because, in our judgment, there existed at the end of the prosecution case credible evidence which, if we accepted it as accurate, established every ingredient of the offence with which the accused stood charged. Accordingly, we were unable to accept the defence contention that no credible evidence existed which linked the accused to the murder of the deceased.

We therefore called upon the accused to enter upon his defence, and gave him the standard allocution prescribed by section 188(2) of the Criminal Procedure Code. After consultation with his counsel, the accused elected to remain silent. We were left with no alternative but to convict the accused of the offence with which he stood charged. We did so, and sentenced him to death.

Order accordingly.

Solicitors: *N.S. Kang.*

RE DOW JONES PUBLISHING (ASIA) INC.'S APPLICATION

[O.C.J. (Sinnathuray J.) 16 May 1988]

[Singapore – Originating Motion No. 135 of 1987]

Administrative Law – Ministerial decision – Review of – Ministerial order on restriction of circulation of foreign publication on the ground that it is engaging in domestic politics – What amounts to "engaging in domestic politics" – Principles of judicial review – Newspaper and Printing Presses Act (Cap. 206, 1985 Ed.), s. 16 – Rules of the Supreme Court 1970, O. 53 – UK Supreme Court Act 1981, s. 31.

Newspapers – Foreign newspaper "engaging in domestic politics" – Restriction of – What amounts to "engaging in domestic politics" – Whether Minister's decision subject to judicial review – Newspaper and Printing Presses Act (Cap. 206, 1985 Ed.), s. 16.

On 9 February 1987 the Minister for Communications and Information gazetted the Asian Wall Journal (AWSJ) as a newspaper engaging in the domestic politics of Singapore and ordered that its circulation be restricted to 400 copies per day, under section 16 of the Newspaper and Printing Presses Act (Cap. 206, 1985 Ed.). This was done after the AWSJ refused to publish a letter from the Monetary Authority of Singapore in response to an article written on the Stock Exchange of Singapore Dealing and Automated Quotation Market. AWSJ challenged the Minister's orders on the following grounds: (a) the Minister had misdirected himself in law; (b) there was a procedural irregularity in that the Minister had not acted fairly; (c) the Minister's decisions were irrational; (d) they were unreasonable. The AWSJ sought an order of certiorari to quash the Minister's decision.

Held, dismissing the application: (1) what is to be regarded as "domestic politics" is a question of fact. In the absence of a statutory definition, the phrase must be given its natural and ordinary meaning. "Politics" comprehends everything that concerns the government of the country. All the multifarious and multifaceted activities with which a government is concerned is encapsulated in the phrase "domestic politics";

(2) whether the conduct of a foreign newspaper amounts to "engaging in the domestic politics of Singapore" is a matter solely for the Minister and not the court